IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO. 587 OF 1994

Anant Chandru Wake, aged about 22 years, resident of village Sule Taluka Chandgad, District Kolhapur. .. Appellant (Org.Accused No.1.)

Vs.

The State of Maharashtra .. Respondent

Mr. S.V. Marwadi with Mr. A.P. Mundargi for Appellant.
Mr. A.M. Shringarpure, APP for Respondent-State.

CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.
Date : May 02, 2005.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed by original accused no.1 in Sessions Case No.4 of 1992 challenging the order of conviction and sentence recorded against him by the 2nd Additional Sessions Judge, Kolhapur on 30/7/1994 convicting him for offence under Section 302 of IPC and sentencing him to life imprisonment and for offence under Section 392 read with section 397 of IPC and sentencing him to RI for seven years and to pay a fine of Rs.1000/- in default SI for six months. The substantive sentences were directed to run concurrently.

2. In the trial Court two accused persons were prosecuted for the offence of murder and robbery under

Section 302 read with Section 34 of IPC and Section 392 read with Section 397 of IPC in respect of murder of Ranger Forest Officer Mangesh Sawant from the office of Social Forestry at Gargoti on the night between 17/12/1990 and 18/12/1990 when robbery of his ornaments and cash from the office cash box had taken place. The office was situated on the first floor of the building known as Ganesh Bhuvan owned by Ganpati Desai. The office of the Social Forestry had three rooms on the first floor of the building Ganesh Bhuvan. Deceased Mangesh Sawant used to reside in the rear side room of the said office. Complainant Khanderao Devardekar who was watchman of the said office used to cook food for deceased Sawant. He used to attend his duties at 8 a.m. and leave the office at 7.30 p.m. after cooking food for the deceased. In the evening of 17/12/1990 he had left the place at about 7.30 p.m. after cooking food for Mangesh Sawant. Next morning on 18/12/1990 when he went to the office at about 8 a.m. as usual, he found the office of the Forest Department locked. He thought that Mangesh Sawant must have gone out and, therefore, he went to ask for key from accused no.2 Arun Kurane who was working as Clerk in that office. As he said that he did not have the key, he waited outside the office until the adjoining Agriculture office on the

first floor called Benar office was opened. Complainant watchman peeped from the top of the wall of that office into the office of the Social Forestry when he saw Mangesh lying on the floor. On the suggestion of accused no.2 who was present there watchman got down in the office of Social Forestry from the wall of the adjoining office and opened the latch of the back door of the office. They saw Mangesh Sawant was having bleeding injury on his head. Blood was seen on the cot as well as on the floor. He, therefore, went and informed landlord Ganpati Desai who asked him to call Ranger Mohite PW 10. Forest Officer Mohite telephoned the police. Police found the safe in another room open and empty cash box was kept on the table. The complaint of watchman PW 1 Khanderao was recorded. The crime was registered. The spot panchanama was drawn by PSI and the dead body was sent for post-mortem examination.

3. As it transpired that the office lock was having two keys, one used to be with deceased Sawant and another with the office Clerk accused no.2 and there was theft of gold ring and gold chain and cash amount from the office cash box, there was suspicion on accused no.2. It seems on his interrogation he had implicated accused no.1. Initially accused no.1 was

not available for arrest though police had gone to his residence. After his arrest blood stained clothes, gold chain, golden ring belonging to the deceased and some newly purchased items of jewellery and other articles were seized from accused no.1. The statements of witnesses from Forest department office were recorded by the police. Seized articles i.e. clothes of deceased and the clothes of the accused were sent to CA. Some of the jewellers were also examined from whom the accused had made purchases and got the golden chain repaired and the name of Mangesh removed from the golden ring and stone fitted therein. After completion of the investigation the charge-sheet was filed against both the accused and the case was committed to the Sessions Court.

4. In the Sessions Court, charges were framed against both the accused for offences under Section 302 read with Section 34 of IPC and also for offence under Section 392 read with Section 397 of IPC, to which both the accused pleaded not guilty. On behalf of the prosecution 21 witnesses were examined which include the Watchman, who lodged the complaint and the Forest Officer P.W. 10 Sidram Mohite. The other witnesses are Police Officers and panchas for scene of

offence panchanama and the recoveries of articles from the accused and also for the recovery of blood stained sickle at the instance of the appellant. The blood stained clothes of the accused no.1 were also seized under panchanama. Apart from the aforesaid witnesses prosecution has also led evidence of goldsmith from whom the appellant had got golden chain repaired and the name "Mangesh" removed from the golden ring and in its place got stone fixed. The goldsmith from whom the appellant had purchased golden ornaments like bormal was also examined. Prosecution has also examined shopkeeper from whom the appellant had purchased electric iron and other items. The brother of deceased was examined to prove that deceased used to wear golden chain and golden ring which were robbed at the time of the incident. Prosecution has also examined the Jeweller who had made the golden chain and golden ring of the deceased. The defence of the accused was of total denial.

5. After considering the entire evidence on record, the trial court acquitted accused no.2 who was working as a Clerk in the Social Forestry Office, but convicted accused no.1 i.e. the present appellant for

the offence under Section 302 of IPC and sentenced him to imprisonment for life. He was also convicted for offence under Section 392 read with Section 397 of IPC and sentenced to RI for seven years and to pay a fine of Rs.1000/- in default SI for six months by the impugned judgment and order dated 30/7/1994. The said judgment and order of the trial court is under challenge in this court in the present appeal.

6. Mr. Marwadi appearing for the appellant-accused argued that the circumstances on the basis of which the appellant has been convicted are not sufficient to infer the guilt of the appellant-accused beyond reasonable doubt. He argued that golden chain recovered from the possession of the appellant is a common item of the jewellery and, therefore, on the basis of that recovery guilt cannot be fixed on the appellant. As regards the golden ring belonging to the deceased is concerned, he argued that since what was recovered from the appellant was golden ring with stone fixed therein, it cannot be said conclusively that it was the same ring which belonged to the deceased with his name inscribed thereon. He lastly argued that recovery of sickle at the instance

of the appellant cannot be made use of by the prosecution as the trial court had not put to the appellant in his 313 examination the C.A. report according to which the sickle recovered at the instance of the appellant was stained with blood of group "O" which was also found on the clothes of the deceased.

7. The conviction of the appellant is based on circumstantial evidence. The trial court found following circumstances having been established by the prosecution against the appellant:-

. First circumstance is of motive. There is evidence against the appellant that previously appellant had borrowed money from deceased Mangesh Sawant when appellant was working in the office of Social Forestry and as the appellant could not repay the money, deceased Sawant had taken appellant’s wrist watch in satisfaction of the loan amount and sold the same to some other person and recovered money which must have annoyed the appellant. Secondly, appellant was seen by the complainant in the vicinity of the office of Social Forestry in the evening of 17/12/1990

and on the same night Mangesh Sawant was murdered. Thirdly, golden chain and golden ring which Mangesh Sawant used to wear were missing from the dead body of Mangesh Sawant and appellant had gone to a Jeweller in Sangli and got removed the name "Mangesh" from the golden ring and got affixed a stone in it on 19/12/1990 and also got the golden chain repaired which must have been broken while removing it from the person of Mangesh Sawant. Both these items i.e. golden ring and golden chain are recovered from the possession of the appellant. When the accused was arrested there was seizure of his clothes which were blood stained and as per the C.A. report blood of "O" group was found on the shirt of the appellant which was also found on the clothes of the deceased. The next circumstance is of the recovery of the blood stained sickle at the instance of the appellant which was stained with blood of group "O". The appellant was missing from his house where he was residing when the police had gone there to search him and as per his landlord appellant was not there since two days before the date of the incident. The appellant had purchased on 18/12/1990 a golden bormal and golden ear tops in respect of which the original receipt was recovered from the appellant which is Exh.39 and the duplicate was recovered from the Jeweller which is Exh.39-A.

Then there is evidence of the appellant having purchased on 19/12/1990 items like charging battery, electric iron and card board box which articles must have been purchased by him after stealing cash from the cash box in the office of the Social Forestry.

8. Complainant Khanderao Devardekar P.W.1 has deposed that appellant was previously serving in the office of the Social Forestry at Gargoti. That time he had borrowed money from deceased. As he could not repay, Mangesh Sawant had taken his wrist watch in the satisfaction of the loan and sold it to one Watchman Shaikh from Phaye. P.W. 6 Sadanand Indulkar has deposed that on 20/12/1990 police had attached some registers, note books, diary and promissory notes with signatures from the Social Forestry Office. There were also promissory notes indicating that deceased Mangesh Sawant was doing money lending business. It was, therefore, quite likely that appellant might have borrowed money from Mangesh Sawant and as he could not repay, his wrist watch was taken by Mangesh Sawant. It is not disputed on behalf of the appellant that he was serving in that office previously. The complainant has also deposed that on the evening of 17/12/1990 he had seen the appellant near that office,

but that by itself does not prove the guilt of the appellant. No doubt in the complaint there was no mention about the appellant working previously in that office or having borrowed money from Mangesh Sawant or appellant was seen near the office in the evening of the date of incident. But when the complaint was lodged, the complainant had no reason to suspect that the appellant was involved in the crime. He has undoubtedly mentioned about these facts in his supplementary statement when appellant was suspected to be involved in the murder of Mangesh Sawant. The appellant has not disputed that he was working previously in the Social Forestry Office. After all motive is not required to be established beyond reasonable doubt. The appellant may have borrowed money from Mangesh Sawant and his watch was taken in satisfaction of that amount as he had not repaid the loan. Even if that transaction is not proved beyond doubt, what is significant is that the appellant was previously working in that office and, therefore, he must be knowing Mangesh Sawant and also that he used to lend money and, therefore, must be having cash with himself as well as the cash of the office in his possession. The murder was committed for the purpose of robbery and not for taking revenge due to previous transaction between the appellant and the deceased.

9. The complainant had seen the appellant standing at the pan shop of More in the evening of 17/12/1990 though he was not chit-chating with anybody there and there is evidence of his landlord that appellant was not staying at the rented premises for few days since before the date of incident. That landlord is Krishna Chougale who was examined as P.W. 9. He has deposed that on 14/12/1990 appellant had gone out saying that he was going to his native place and would return eight days thereafter.

10. The brother of deceased Mangesh Sawant P.W. 17 Yeshwant Sawant has deposed that deceased Mangesh Sawant used to wear a golden chain and a golden ring and his name "Mangesh" was written on that ring and when he saw his dead body, the chain and ring were missing. When the new ring was shown to him he identified it and said that there was some change effected in the ring. He has also identified the chain of his brother. Similarly, Forest Officer Mohite P.W. 10 has also deposed that Mangesh Sawant used to wear a gold chain and a golden ring and his name "Mangesh" was written on the golden ring. He used to always wear those ornaments but the witness

found golden chain and golden ring missing from the dead body of Mangesh. He has identified golden chain (Article 14) as similar to the one which deceased Mangesh Sawant was using. But he rightly could not identify golden ring (Article 20) as there was change effected in it, the name "Mangesh" having been removed and replaced by a stone which was fixed therein.

11. More importantly there is evidence of the jeweller to whom appellant had approached on 19/12/1990 for getting golden chain repaired and name "Mangesh" removed from the golden ring and get stone fixed therein. That jeweller is P.W. 13 Ashok Asgaonkar. He is having his shop at Sangli. He has deposed that on 19/12/1990 appellant had approached him for the repair of golden chain. The appellant also gave him a golden ring with name "Mangesh" thereon and got fixed the stone. He had charged him Rs.35/- for that service. He had issued receipt in his own hand writing under his signature which is produced on record as Exh.37. That receipt was recovered from the possession of the appellant. P.W. 13 has stated that he had called the appellant after two hours within which time he removed the name from the ring and affixed stone thereon. He had issued

receipt to him. But when appellant came back he said that he had forgotten to bring that receipt and, therefore, he had returned him the golden ring and golden chain without production of that receipt which was ultimately recovered from the possession of the appellant himself. He has identified that receipt and also golden ring and chain when shown to him in the court. This jeweller is absolutely an independent witness and had no reason to falsely give evidence against the appellant. Significantly, that receipt Exh.37 issued by P.W. 13 was recovered from the possession of the appellant and, therefore, it ensures that the appellant must have gone to him. Thus, the prosecution witnesses have deposed that deceased Mangesh Sawant used to always wear golden chain and ring which were missing from his person otherwise there would have been mention in the inquest panchanama about the same. The seizure of receipt Exh.37 issued by P.W. 13 which bears his name and also signature, proves that appellant must have gone to him for the purpose of getting the golden chain and golden ring repaired from him. It was because of the seizure of the receipt from the accused that the police could interrogate the accused and approach P.W. 13 Ashok Asgaonkar.

12. The spot panchanama shows that the cupboard in the office was open and the empty cash box was kept on the table. This would mean that the person who had committed the murder and robbery had removed not only the golden chain and the golden ring from the person of the deceased but also removed cash from the cash box which was utilised by the appellant subsequently to make purchases of golden ornaments and some electrical items.

13. There is also evidence of P.W. 14 Rajendra Bubane. He is also dealing in gold and silver and is having his shop at Sangli. He has deposed that on 18/12/1990 one person by name Anant i.e. the appellant had gone to his shop for purchasing golden bormal. He gave him one old chain of small bids of gold and a ring of gold. In lieu of that he gave the appellant new bormal and ear tops of gold for which he passed receipt dated 18/12/1990 which is Exh.39 which was seized from the appellant. He had produced duplicate receipt dated 18/12/1990 (Exh.39A) issued in the name of Anant Chandru Wake i.e. appellant bearing Receipt No.8228. The witness has deposed that the appellant had to pay him Rs.94.50 towards the balance

after giving credit for old chain and ring given to him by the appellant. Thus immediately, after the robbery, on the following day the appellant had the money to buy a new golden bormal and the ring.

14. The evidence of the landlord of the appellant P.W. 9 Krishna Chougale is also important. He had let out one room in his building to the appellant on monthly rent of Rs.40/-. According to him he was not possessing any ornament when he left on 14/12/1990 but when he returned after a period of few days he saw a golden chain and a golden ring on his person. He was shown golden bormal and ear tops by the appellant which were according to the appellant bought by him for his wife. On his return he also saw that the electric iron and battery meant for T.V. set was brought in a new suitcase. He has identified those items shown to him in the court which were seized from the house of the accused. He has deposed that appellant had returned on Thursday and the police had gone to his room on the next day i.e. Friday and arrested the appellant.

15. At the time of his arrest, blood stained

clothes of the accused and some articles including gold ornaments were seized. The prosecution has led evidence of panch Basavraj Patil P.W.4. He had gone along with the police to the house of P.W.9 Krishna Chougale the landlord of the appellant. Appellant was residing there as a tenant. When the search of his room was taken by the police they noticed new electric iron, briefcase, a battery and ornaments like bormal, ear tops, gold chain and gold ring, a pant and a shirt which were attached under panchanama Exh. 18. There were also currency notes in the briefcase. The shirt was blue in colour and was having blood stains which was also mentioned in the seizure panchanama Exh.18. There were also currency notes in the briefcase and receipt of ornaments which were also attached. He has identified the articles which were attached from the possession of the appellant on that day being golden ring (Article 40) and golden chain (Article 39) which were belonging to the deceased and briefcase (Article 38), golden bormal (Article 41) and golden ear tops (Article 42). The police had also attached ornament card board box (Article 43), torch (Article 47), electric iron (Article 48) and stabilizer (Article 49) and cash of Rs.250/- (Article 50). He has also identified Manila shirt (Article 51) and pant (Article 52). There was receipt of ornaments passed by one

Ramchandra Bubane, Saraf of Sangli in favour of accused no.1 on 18/12/1990 which is proved by the said jeweller. That receipt is article no.44. There was also guarantee card of the stabilizer issued by Sandesh Electronic on 19/12/1990 which is article no.46. There was a chit containing name of Ashok Asgaonkar which is article no.45 which was also identified by the jeweller Ashok Asgaonkar. These articles were attached from the possession of the accused at the time of his arrest. All those articles are mentioned in seizure panchanama dated 21/12/1990 Exh.18. The seizure panchanama mentions that faint stains were seen on the left sleeve and front left and right shoulder of the Manila shirt. That shirt was sent to the C.A. for examination and as per the report of the C.A. the shirt was found stained with blood of group "O" which was also found on the clothes of the deceased as per the C.A. report.

16. Thus, the purchases made by the appellant on the following two days after the incident i.e. 18th and 19th December, 1990 shows that the appellant had the money to buy those items of jewellery as well as some other articles and still was left with cash of Rs.250/-. He bought a new briefcase also. The

briefcase valued at Rs.150/-, one golden chain valued at Rs.6800/-, one golden ring valued at Rs.1700/-, one bormal valued at Rs.2400/-, one pair of "Panadya" worth Rs.200/-, the torch worth Rs.155/-, the electric iron worth Rs.110/- and the stabilizer of Crown Company bought newly by the appellant valued at Rs.350/- were seized from the possession of the appellant at the time of his arrest. The prosecution has also examined the shopkeeper from whom the appellant had purchased electric and other items. He is P.W. 15 Vishwanath Kanitkar who is running shop in the name of "Mahesh Light House" at Sangali. He has identified the appellant to whom he had sold charging torch and electric iron. He has also identified those articles sold to the appellant.

17. Finding of blood on the shirt of the accused of "O" group which is that of the deceased is significant circumstance for the involvement of the appellant in the murder of Mangesh Sawant. No doubt C.A. report was not put to the accused in his 313 examination, but it was put to the accused that his shirt (Article 51) and pant (Article 52) were having blood stains but instead of offering any explanation he has simply denied it as false. Though the accused

was asked to explain about the blood stained clothes which were recovered from his house he did not offer any explaination. It would have been better if the C.A. report had been put to him about the finding of blood of group "O" which was found on his shirt. But the fact that he was asked to explain the finding of blood on his clothes and no explanation having been given by the appellant, the said circumstance can be used against the appellant. The reliance by Mr. Marwadi on the judgment of the Supreme Court in the case of Rahim Beg & Anr. vs. State of U.P. reported in **(1972) 3 SCC 759** is not applicable to this case. In that case accused was not questioned about the presence of blood on his clothes and, therefore, it was held that no inference could be drawn on that account against the accused. In this case as pointed out above, the appellant was questioned about the presence of blood on his clothes but he did not offer any explanation. What was not put to him is the C.A. report, according to which his shirt was stained with blood of group "O". The circumstance of finding of blood on his shirt having been put to the appellant, it can very well be relied against the appellant.

18. The next circumstance relied on by the

prosecution is recovery of sickle at the instance of appellant under Section 27 of the Evidence Act. The prosecution has led evidence of the panch Ashok Jagtap P.W. 2 regarding the said recovery. It was seized under seizure panchanama Exh.14. But since the finding of blood on the said sickle was not put to the appellant for explanation under Section 313 of Cr.P.C., the said circumstance cannot be considered against the appellant as rightly contended on behalf of the appellant, though as per the C.A. report the sickle was found stained with blood of group "O" which was also found on the clothes of the deceased.

19. The trial court had referred to the judgment of the Supreme Court in the case of Baiju V/s. State of M.P. reported in **AIR 1978 SC 522** in which it was held that recent and unexplained possession of stolen articles can be taken to be presumptive evidence of the charges of murder as well. In this case the prosecution has proved that the appellant was found in possession of the gold chain and ring of the deceased which he got repaired on 19/12/1990. Appellant was also found in possession of cash of Rs.250/- after making purchases of electric and other items. He had made purchases within two days i.e. 18th and 19th December, 1990 after the incident which took place on

17th December, 1990. The appellant not having explained as to from where he got money to make those purchases, there is a presumption that he must have made purchases from the cash stolen by him after committing the murder of Mangesh Sawant. Since robbery had taken place on the night and at the place where murder of Mangesh Sawant was committed there is definite link between the robbery and the murder and the person who had committed robbery can be presumed to be guilty of offence of murder also.

20. Prosecution has led evidence of Dr. Babasaheb Chougale P.W. 11 who had conducted post mortem examination on the dead body. Doctor had found following external injuries on the person of the dead body:-

1. Cut injury on forehead 9 cm x 2.5 cm on frontal bone.

12 cm x 1/2 cm. deep to the brain on the forehead. There was vertical fracture to frontal bone on right side of the above injuries.

2. Cut injury transfers, 5 cm. string from right ear, extended upto nose 13 cm x 2 cm breadth at supra maxillary area 1 cm. breadth at the right side of nosal area 1/2 cm on nose.

3. Cut injury : Transverse, Below the lower lip. It is from the mid point of mendibular to 1 c.m. short of laternal corner of mouth. It will 11 c.m. x 2 c.m. Deep through mandible bone. There was fracture of mandible bone.

4. Cut injury On Rt. Deltoid muscle oblique. 9cm x 1/2 cm. x skin deep.

On Prone position.

1. Cut injury Transverse injury on the back of the neck 10 cm x 2 1/2 cm. Deep up to vertibral column. There is total fracture of 7th certival vertibra through and though spinal card. Abrasions on Rt. knee and below knee 2 cm. x 3 cm. in diameter. Abrasion on the back side of Rt. elbow above 10 cm. x 6 cm.

21. The first injury in supine position and the injury in prone position are stated to be internal injuries which are co-related to the external injuries. As per the doctor all the injuries were grievous and were sufficient to cause death. These injuries were possible by sharp and heavy instrument like sickle (Article 55) produced before the court. The cause of death is given to be due to shock due to spinal cord and brain injuries. The medical evidence leaves no doubt that the deceased had met with an homicidal death which is not challenged on behalf of the defence.

22. The appellant being found in possession of the golden chain and golden ring of deceased which were missing from the dead body and being in possession of newly purchased articles on 18th and 19th December, 1990 and still having Rs.250/- cash amount left with him without explaining the possession thereof, leaves no doubt in our mind that it was appellant who had committed murder of Mangesh Sawant and committed robbery. His own shirt which was seized from his residence on the date when he was arrested was stained with blood but he failed to explain the blood stains on his shirt.

23. The argument advanced on behalf of the defence that there is no mention in the panchanama that the hole in the ring was new one is without any substance. Once the name is removed by removing the upper portion of the ring for fixing the stone, it is not possible to say whether the stone was fixed after removing the name of Mangesh on the ring. It was also argued on behalf of the defence that since the test identification parade was not held in respect of the articles, the seizure of golden ornaments and other articles cannot be used as circumstance against the appellant. However, the trial court has rightly placed reliance on the judgment of the Supreme Court

in the case of Earabhadrappa vs. State of Karnataka reported in **AIR 1983 SC 446** in which it was held that the identification of the incriminating articles by the concerned person without T.I. parade is admissible. The trial court has also considered that the appellant was absconding from the place of his residence for a few days after the incident in question. The reliance by the defence on the judgment of the Supreme Court in the case of Bhalinder Singh vs. State of Punjab reported in **(1994) 1 SCC 726** is not relevant in this case. The circumstances which are proved against the appellant taken together lead only to the hypothesis of the guilt of the appellant and are inconsistent with the theory of his innocence.

24. In view of the above circumstances, we do not find fault in the judgment of the trial court convicting the appellant on the basis of the aforesaid circumstances which were established by the prosecution beyond reasonable doubt.

25. In the result, the order of conviction and sentence recorded against the appellant by the 2nd

Additional Sessions Judge, Kolhapur on 30/7/1994 in Sessions Case No.4 of 1992 is confirmed and the appeal is dismissed.

. The appellant shall surrender to his bail bonds forthwith.

(S.S. Parkar, J.)

(Anoop V. Mohta,J.)